

MINUTES
SENATE FINANCE COMMITTEE
April 26, 2004
9:01 AM

TAPES

SFC-04 # 94, Side A
SFC 04 # 94, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:01 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice-Chair
Senator Fred Dyson
Senator Ben Stevens
Senator Donny Olson
Senator Lyman Hoffman

Also Attending: LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; BILL HOGAN, Director, Division of Behavioral Health, Department of Health and Social Services; VERNER STILLNER, Legislative Representative, Alaska Psychiatric Association; GREG O'CLARY, Commissioner, Department of Labor and Workforce Development; GREY MITCHELL, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development RACHEL LEWIS, Unclaimed Property Administrator, Division of Treasury, Department of Revenue;

Attending via Teleconference: From Fairbanks: JEANNETTE GRASTO, Member, Alaska Mental Health Board and the National Alliance for the Mentally Ill; From Anchorage: VERA JAMES, Alaska Native Health Board; From an offnet location: JEFF JESSEE, Executive Director, Alaska Mental Health Trust Authority;

SUMMARY INFORMATION

HB 347-EXEMPT TAXIS FROM VEHICLE RENTAL TAX

The Committee heard from the sponsor and the bill reported from Committee.

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

The Committee heard from the Department of Community and Economic Development. Two amendments were considered but not adopted and the bill reported from Committee.

SB 364-LIMIT STATE AID FOR MENTAL HEALTH CARE

The Committee heard from the Department of Health and Social Services, the Alaska Mental Health Trust Authority and advocates for the mentally ill. The bill was held in Committee.

SB 278-FEES:REC DEVICES/BOILERS/CERT. OF FITNESS

The Committee heard from the Department of Labor and Workforce Development. An amendment was adopted and the bill was held in Committee.

SB 368-TOBACCO TAX; LICENSING; PENALTIES

After a brief discussion the bill was reported from Committee.

SB 231-DECREASE TIME TO CLAIM UNCLAIMED PROPERTY

The Committee heard from the Department of Revenue. Two amendments were adopted and the bill was reported from Committee.

#HB347

HOUSE BILL NO. 347

"An Act exempting taxicabs from the passenger vehicle rental tax; and providing for an effective date."

This was the third hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, "exempts taxicabs from the vehicle rental tax. In the last year the Legislature established a ten-percent vehicle rental tax on the lease or rental of passenger vehicles. House Bill 347 exempts taxicabs from the definition of a passenger vehicle."

SUE STANCLIFF, staff to Representative Pete Kott, had no new testimony to offer, she relayed that the sponsor supports the action taken at the previous hearing of rescinding adoption of Amendment #1.

Co-Chair Green offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

Without objection HB 347 MOVED from Committee with a zero fiscal note #1 from the Department of Revenue.

#SB311

CS FOR SENATE BILL NO. 311(JUD)

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission and the Workers' Compensation Hearings Board; relating to agreements that discharge workers' compensation liability; providing for hearing examiners and hearing panels in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

This was the third hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "changes the way workmans' compensation disputes and appeals are resolved. Under Senate Bill 311, appeals [would be] reviewed by the newly created

workmans' comp commission."

Amendment #1: This amendment deletes "Workers' Compensation Appeals Commission" and inserts "workers' compensation hearings office" on page 1, lines 9, 10 and 11, and deletes "providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission;" on page 2, lines 4-6. The amended title of the bill reads as follows.

An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a workers' compensation hearings office; assigning certain functions of the Alaska Workers' Compensation Board to the workers' compensation hearings office and the Workers' Compensation Hearings Board; relating to agreements that discharge workers' compensation liability; providing for hearing examiners and hearing panels in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

This amendment also deletes "Workers' Compensation Appeals Commission" and inserts "workers' compensation hearings office" on page 4, line 27, 29 & 30, page 5, line 6, and page 6, lines 20-21, and deletes "chair of the commission" and inserts "chief hearing officer" on page 7, line 14. This amendment also replaces references to the "office of the commission" and "commission" with "hearings office" and replaces references to "commission clerk" with "chief hearing officer" where they appear in the bill.

This amendment also deletes from Section 10, new sections:

23.30.007, 23.30.008, and 23.30.009, on page 8 line 16 through page 11, line 30 and inserts new language to read as follows.

Sec. 23.30.007. Workers' compensation hearings office.

(a) There is established in the Department of Labor and Workforce Development a workers' compensation hearings office. The hearing examiners and hearing panel hear original petitions when a claim is filed under this chapter and have jurisdiction to hear appeals from decisions and orders of the director.

(b) The commissioner shall appoint a chief hearing officer and hearing examiners.

(c) The chief hearing officer may

(1) employ and supervise hearing office staff, hearing examiners, and hearing panels and appoint a hearings office clerk;

(2) establish and implement a time management system for the hearings office, staff, and hearing examiners;

(3) assign the work of the hearing examiners, hearing panels, and staff so that hearings and appeals are resolved as expeditiously and competently as possible, including designating hearing examiners to hear preliminary matters; and

(4) prepare and annual budget of the hearings office and hearing panels.

(d) The hearings office, in its administrative capacity, shall maintain, index, and make available for public inspection the final administrative decisions and orders of the hearing examiners and hearing panels. To promote consistency among legal determinations, the chief hearing officer may review and circulate among the other hearing examiners the drafts of formal decisions, decisions upon reconsideration, and other legal opinions of the other hearing examiners of the hearings office. The drafts are confidential documents and are not subject to disclosure.

(e) The hearings office, in its administrative capacity, may adopt regulations implementing its authority and duties under this chapter, including rules of procedure and evidence for proceedings before hearing examiners and hearing panels in workers' compensation proceedings under AS 23.30.090 and 23.30.110 and for the adjudication of all claims and petitions under this chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the adoption of regulations by the hearings office.

(f) The hearings office, in its administrative capacity, may adopt and alter an official seal and do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

This amendment also deletes all language on page 32, line 3 through line 16, following "defense" in Section 55, amending Sec. 23.30.108(c).

This amendment also deletes ", but is not a public employee for purposes of AS 23.40" from page 35, line 16, in Section 58 that adds a new Sec. 23.30.112. Hearing examiners.

This amendment also deletes Section 63 and Section 64 on page 38, line 14, through page 43, line 1 and inserts new bill sections to read as follows.

Sec. 63. AS 23.30.125(a) is amended to read:

(a) A compensation order becomes effective when filed with the director [IN THE OFFICE OF THE BOARD] as provided in AS 23.30.110, and, unless proceedings to suspend it or set it aside are instituted as provided in (c) of this section, it becomes final on the 31st day after it is filed.

Sec. 64. AS 23.30.125(c) is amended to read:

(c) If not in accordance with law, a compensation order filed by a hearing examiner or hearing panel as provided in (a) of this section may be suspended or set aside, in whole, or in part, through injunction proceedings in the superior court brought by a party in interest against the division [BOARD] and all other parties to the proceedings [BEFORE THE BOARD]. The payment of the amounts required by an award may not be stayed pending final decision in the proceeding unless upon application for an interlocutory injunction the court on hearing, after not less than three days' notice to the parties in interest and the director [BOARD], allows the stay of payment, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing a stay must [SHALL] contain a specific finding, based upon evidence submitted to the court and identified by reference to it, that irreparable damage would result to the employer, and specifying the nature of the damage.

Sec. 65. AS 23.30.125(d) is amended to read:

(d) If an employer fails to comply with a compensation order making an award that has become final, a beneficiary of the award or the director [BOARD] may apply for the enforcement of the order to the superior court. If the court determines that the order was made and served in accordance with law, and that the employer or the officers or agents of the employer have failed to comply with it, the court shall enforce obedience to the order by writ of injunction or by

other proper process to enjoin upon the employer and the officers and agents of the employer compliance with the order.

Sec. 66. AS 23.30.125(f) is amended to read:

(f) Subject to an employer's or employee's burden of proof, a finding of fact made by the hearing examiner or hearing panel [BOARD] as a part of a compensation order is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the hearing examiner or hearing panel [BOARD].

New Text Underlined [DELETED TEXT BRACKETED]

This amendment also deletes Section 75 amending AS 23.30.155(f) on page 47, lines 13-20.

Senator Hoffman moved for adoption.

Co-Chair Green and Co-Chair Wilken objected.

Senator Hoffman recalled an equal amount of testimony supporting and opposing this amendment. He stated that most testimony recognized the benefits of some provisions of the bill. However, he was not convinced from the testimony that the creation of the appeals commission would save money and result in lower insurance premiums. He referenced page two of fiscal note #3 from the Department of Labor and Workforce Development projecting the cost of the appeals commission at \$1.2 million. He commented that it was unfortunate that all Members were not present to hear testimony from three individuals who have worked in the field of workers' compensation for a combined period of over 50 years. He relayed this testimony expressing concern with the proposal to replace a judge with three commissioners.

Senator Hoffman told of the approximate 35 to 50 workers' compensation cases heard in superior court. He calculated the number of cases the three member commission would hear to be "a fraction" of the approximately 600 cases heard annually by a superior court judge. He also pointed out the proposed salary of the three commissioners, one at a Range 30F salary would significantly exceed the salary paid to one judge.

Senator Hoffman also was unconvinced that less time would be required for workers' compensation claims with the creation of the commission. Since the system is unproven, he informed that he had suggested the legislation should have a lapse date, at which time the process would be evaluated. He stated this suggestion was rebuffed.

Senator Hoffman supported Sections 1 through 7 of the bill. However, he asserted that with the major deficits facing the State, the additional \$1.2 million expense of the proposed commission are unwarranted since no savings has been proven.

Co-Chair Wilken questioned the \$1.2 million amount.

Senator Hoffman cited page two of page four of the Department of Labor and Workforce Development fiscal noted dated 2/9/04, which projects personal services costs at \$1,183,900 associated with the new positions.

Co-Chair Wilken informed of an updated fiscal noted 4/20/04, which projects the amount to be \$627,000.

Senator Hoffman pointed out the personal services amount remains listed as \$1,183,900, as shown on page two of the updated fiscal note.

Co-Chair Wilken clarified the existing \$938,000 allocated for the workers' compensation appeals process must be deducted. He listed two cost components in the updated fiscal note: \$627,000 for new workforce and \$198,000 for appellate courts.

Senator Hoffman agreed; however was not convinced from the testimony that this legislation would streamline the workers' compensation process. He noted that experts in this matter predict the changes would add time and expense to the process. He also remarked that the Alaska Supreme Court has no flexibility in determining which cases it would hear, and as testified to by the Alaska Court System, costs for that branch of government would likely increase.

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman and Senator Olson

OPPOSED: Senator Dyson, Senator B. Stevens, Senator Bunde, Co-Chair Green and Co-Chair Wilken

The motion FAILED (2-5)

The amendment FAILED to be adopted.

Amendment #2: This amendment deletes language from Section 64 on page 40, lines 28-31 and inserts new language to read as follows.

Sec. 23.30.128. Commission proceedings. (a) The commission shall review all discretionary actions and findings of fact by a hearing examiner, hearing panel, or the director under the substantial evidence standard of review. The commission shall review the conclusions of law by a hearing examiner, hearing panel, or the director using the commission's independent judgment. A hearing panel's findings regarding the credibility of testimony of a witness are binding on the commission. The findings of the hearing panel, if not set aside by the commission, are conclusive.

Senator Olson moved for adoption.

Co-Chair Green objected.

Senator Olson commented this legislation is the result of the financial burden that workers' compensation insurance has incurred for businesses, particularly small businesses. He stressed the worker's compensation system must be reviewed and revised to become more efficient. He outlined the current practice of due process, notably that the appellate court does not consider new evidence but rather whether the lower court operated correctly. He pointed out that this legislation would allow the proposed commission to consider new evidence, resulting in essentially two trials. He agreed with the intent that the workers' compensation system should be streamlined and argued that the proposed process would instead "clog up the system". He questioned the ability of the commission to preserve the "standard of review" and operate under these circumstances. He asserted the proposed commission would add "another layer of government."

Co-Chair Green reviewed testimony from an assistant attorney general with the Department of Law, who disagreed with Senator Olson on this matter, in that the role of the proposed commission would not establish new precedent in the appeal process.

Senator Olson acquiesced that Kristin Knudsen, affirmed that currently the superior court could hear new testimony, but he pointed out that in actuality only five percent of cases have allowed new evidence to be introduced.

Co-Chair Wilken noted Ms. Knudsen was available to testify via teleconference.

Senator Bunde compared the appeals process to the legislative committee process with himself as the chair of the Senate Labor and Commerce Committee and Co-Chair Wilken, chair of the Senate Finance Committee, hearing much of the same testimony.

Senator Dyson appreciated the efforts of Senator Olson to save money and streamline the workers' compensation process. Senator Dyson relayed that many friends who incurred workplace injuries and became involved in the workers' compensation system were unsatisfied with the appeals process. He commented that many injuries worsen over time and that he favored allowing new information about the worsening injuries to be considered. He therefore did not support adoption of the amendment.

Senator Hoffman stated that Senator Bunde is correct in comparing the workers' compensation appeals process to the legislative committee process, but stressed the processes are long and costly. He opined this legislation would not streamline the process, but rather delay proceedings.

Senator Hoffman requested demonstration of the savings testified to. He cited that data shows 50 percent of cases are awarded to the employer and 50 percent are awarded to the employee. He therefore concluded that savings would only be realized with fewer cases awarded to employees.

Senator Olson stressed the entire appellate system is intended to review decisions made at lower levels to ensure laws have been followed, etc. He agreed that new evidence would be helpful, but reiterated it would "bog down the system".

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, cited language in Section 64, adding Sec. 23.30.128(b), on page 41, lines 6 & 7 of bill, "Except as provided in (c) of this section, new or additional evidence may not be received with respect to the appeal."

Senator Olson acknowledged this point; however, remarked his amendment addresses language in Sec. 23.30.128(a) on page 40, lines 28 and 29, "The commission may review de novo all discretionary actions, findings of fact, and conclusions of law by the hearing examiner, hearing panel, or the director in hearing, determining, or otherwise acting on any compensation claim or petition."

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman and Senator Olson

OPPOSED: Senator B. Stevens, Senator Bunde, Senator Dyson, Co-Chair Green and Co-Chair Wilken

The motion FAILED (2-5)

The amendment FAILED to be adopted.

Senator Dyson expressed his conflicting support for this legislation, commenting that most of the provisions would be an improvement over the current system, although he remained concerned about "other contentious areas." He relayed a discussion he had in which he learned that the law and structure of either system would be adequate depending on the quality, experience and commitment of the people entrusted to implement it. He remarked that the Administration must employ fair and qualified staff. He surmised that if operated correctly, the new provisions would streamline the system. He charged the Murkowski Administration with recruiting and employing the best possible staff.

Senator Hoffman informed he would be voting against this legislation. He stressed that as an employer, he must "make payroll" and that he failed to recognize any savings created from these changes. Rather, he asserted this legislation would create "bigger government and not even better government."

Co-Chair Green stated that the current system is inefficient and cumbersome, noting that some cases are pending for over a year, with no superior court hearing scheduled.

Senator Olson commented that workers' compensation is a "sticky quagmire" that as an employer, he must pay into. He assured that he has the welfare of his employees at heart but that there is a better way to address the issue.

Co-Chair Green offered a motion to report the bill from Committee with individual recommendations, accompanying fiscal notes and a new fiscal note.

There was no objection and CS SB 311 (JUD) MOVED from Committee with zero fiscal notes #1 and #2 from the Department of Community and Economic Development and Department of Law, respectively, indeterminate fiscal note #4 from the Department of Administration, fiscal note #5 for \$198,800 from the Alaska Court System and a new fiscal note for \$627,000 dated 4/20/04 from the Department of Labor and Workforce Development.

#SB364

CS FOR SENATE BILL NO. 364(HES)

"An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an

effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "provides a mechanism to help contain the costs of Designated Evaluation and Treatment program. The DET program provides psychiatric inpatient care to certain persons enabling them to receive care close to their home and family." He noted the Senate Health and Social Services Committee adopted a letter of intent.

JEANNETTE GRASTO, Member, Alaska Mental Health Board and the National Alliance for the Mentally Ill-Alaska, and the National Alliance for the Mentally Ill-Fairbanks, testified via teleconference from Fairbanks about her advocacy for people with mental illness. She read her testimony into the record as follows.

SB 364 represents a major philosophical change without discussion. It conflicts with the principles articulated in Alaska Statute 47.36.055 and a shared vision too [of] our current plan for mental health services. It violates the principle that services will be provided in the least restrictive setting and as close to the client's home as possible. If changes in policy are going to be made, it should be made with discussion and input from mental health consumers, mental health courts, hospitals, the Division of Behavioral Health and other stakeholders.

The utilization review section of this bill would allow more efficient use of resources and appears to be a positive step, but savings from improved management should be used for added service capacity.

The rest of the bill represents a giant step backward. In Fairbanks we are so grateful to have the capacity and quality of programs that we currently have at Fairbanks Memorial Hospital for DET beds in our mental health unit. These beds are a critical part of the community-based services we rely on. Before this unit was expanded to 20 beds, many Fairbankans in acute need have spent up to three days in jail and then were transported to API [Alaska Psychiatric Institute] in Anchorage 300 miles away from their families and natural support system. This was a terrible situation for both consumers and their families and often exacerbated their illness and symptoms. It seems like the dark ages now looking

back on it. We've come so far.

Our State is currently trying to expand DET beds so people can access services in their community and that was a consensus decision by the mental health community. API is downsizing and could be reserved for the most complex people whose needs can't be met locally. And communities would be expected to take care of their own whenever possible.

The people we're talking about in this bill are among the most vulnerable of Alaskans. They're either a danger to themselves or others or they're gravely disabled and unable to take care of themselves. They're the poorest of the poor without even disability income or Medicaid. Alaska clearly has a responsibility to take care of these vulnerable people. I also think its discriminatory because we're denying them access to a community system of care that everyone else uses. They become second-class citizens even among an already marginalized group.

Maybe you think it doesn't matter because it won't affect anybody you know. But mental illness affects one in five Alaskan families. It isn't rare and the treatment for mental illness is more effective than heart disease or cancer. I'm always amazed how many of my friends are struggling either with mental illness themselves or with a family member. And it really is a crisis when it happens to you. It isn't uncommon when mental illness first strikes, a person is unable to work and has no other income and is indigent until they either return to work or qualify for disability income.

Finally, many DET patients are involuntarily committed. Is it appropriate to take away the civil rights of an indigent individual and then not cover their treatment? What kind of state are we becoming if we pretend to be broke? If Alaska is so broke we cannot take care of these most vulnerable Alaskans then it is imperative that we have a sound fiscal plan that guarantees we can serve their needs. Cuts to State budget must never come from need.

Co-Chair Wilken thanked the witness for her on-going volunteer work with the mentally disabled.

VERA JAMES, Alaska Native Health Board, testified via teleconference from Anchorage as follows.

The ANHB is the over-arching voice representing 229 federally recognized tribes. As part of its mission the ANHB strives to

promote the mental wellbeing and pride of Alaska Native people. Some of these people seek mental health treatment and not all patients of mental health facilities are covered under insurance or other third-party resources, including Medicaid, to pay for the cost of evaluation or treatment.

The Alaska Native Health Board therefore urges the state of Alaska to provide financial assistance for the liability of expenses of patient placement in certain mental health facilities. The ANHB supports the implementation of SB 364, which mandates that those needing mental health treatment be eligible for financial assistance under the Act.

JEFF JESSEE, Executive Director, Alaska Mental Health Trust Authority, testified via teleconference from an offnet location that the Authority supports many provisions in this bill, specifically the "management tools" the Department is seeking. He gave examples of adequate notice and timely applications for services provided. He spoke in favor of efforts to ensure the Department does not pay more for treatment and evaluation than is necessary.

Mr. Jessee however, expressed concern that in the event it appears inadequate funds were available during a fiscal year to provide necessary services the Department of Health and Social Services could cease payment. He predicted this would result in the transportation of many patients from areas of the state to the Alaska Psychiatric Institute (API). He reminded that the new API facility was constructed specifically upon the premise that services would be available and would expand over time. He noted that facilities in Fairbanks and Anchorage are equipped to provide diagnosis.

Mr. Jessee informed that designated evaluation and treatment facilities are expensive to operate and must have a yearlong business plan. He furthered that hospitals must have certainty of funding and that a hospital considering undertaking a capital investment must consider the possibility that a major fund source might not be guaranteed year round. He also pointed out that as the program expands to more communities, funds would be divided further, as is occurring with the community mental health block grants. He warned that if a facility, such as the program operating in Juneau were to close for a portion of the year, the State would incur the cost of transporting patients to the API facility in Anchorage.

SFC 04 # 94, Side B 09:48 AM

Mr. Jessee continued that this proposal would do significant damage to the emergency system in the state. He recommended that these sections be omitted from the bill, especially Section 2.

Mr. Jessee emphasized that other provisions of this bill are positive, in that they would support additional management tools if the Department found them necessary.

Senator Hoffman asked how a patient would be cared for if this bill were implemented and the API facility was at capacity.

Mr. Jessee deferred to the Department. However, he predicted this would be a significant problem, noting the limited number of "beds" licensed for mental health care. He reported that in instances of high occupancy, patients are released at the first opportunity, which is often not advisable treatment and that many of these patients must be readmitted.

Senator Hoffman asked if capacity limits would be reached more often under the provisions of this legislation.

Mr. Jessee affirmed that facilities would reach capacity sooner. He spoke to the difficulties of releasing patients from API who are not Anchorage residents. He explained the importance of a patient's community in outpatient treatment.

Co-Chair Wilken recalled these issues were discussed when this bill was heard in the Senate Health and Social Services Committee. He noted the letter of intent adopted by that committee and recommended the Senate Finance Committee also adopt the letter to express the intent that alternative revenue sources should be secured so that the level of services would not be affected.

BILL HOGAN, Director, Division of Behavioral Health, Department of Health and Social Services reaffirmed the State is responsible to pay the cost of diagnosis, evaluation and treatment for those individuals who are financially eligible and who need to be involuntarily committed to non-State operated hospitals. He read testimony into the record as follows.

The costs of these services and the related transportation have increased dramatically over the past several years. From FY 01 through FY 03, the costs have increased over 100 percent. The rationale for those increases has to do with an increase in the average daily Medicaid rate as well as an increase in the total number of beds utilized between [FY] 01

and [FY] 03.

The intent of SB 364 is to reaffirm the importance of DET as the cornerstone our foundation of our community mental health system, but at the same time give us a mechanism to more adequately manage diagnosis, evaluation and treatment services. The bill would give us the capability through a registration process - through hospitals having to register people who come into their facilities within 24 hours - at least a better mechanism to manage costs. Currently it's possible that someone might be admitted to a DET service and the State would not be notified for up to six months after admission. This legislation would require notification within 24 hours. It also would give us the capability of "day 8" which is a critical day when trying to stabilize individuals who serious psychiatric problems or symptoms. It would give us the capability of actively working with the hospitals to ensure that if the person needs to be in the hospital that we would actively or proactively work with the hospital. If the person did not need to be in the hospital, we would actively work to develop a discharge plan to leave the hospital.

Again, as you've heard we have worked actively with our partners, including the Alaska State Hospital and Nursing Association, the Alaska Mental Health Board, the Alaska Mental Health Trust [Authority], various advocates, and then members and clients, to come up with language that is for the most part is acceptable to all parties.

The one sticking point continues to be Section 2, which essentially stipulates that we will only fund the service up to the appropriation from the legislature. As Senator Wilken has pointed out, in our letter of intent, we clearly commit to looking at all other possible funding sources to ensure that we are able to adequately fund this particular service. However if we are not able to come up with additional dollars, in the worst case scenario, an individual would have to be sent to API. Let me also point out that we want to actively and will continue to actively work with our community mental health providers to find alternative community facilities or programs for individuals before they would have to be transferred to API.

Senator Hoffman asked the Division's intent in implementing this legislation.

Mr. Hogan listed the first priority as locating services within the patient's community. He stated the Department would try to locate

alternative placement if no services were available in the patient's community and API was at capacity. He stressed the intent to ensure patients receive hospital care if needed.

Senator Hoffman asked how services would be delivered to patients residing in a community without a treatment facility in the event API had no vacancies.

Mr. Hogan replied this scenario occasionally occurs. In these instances, he stated that efforts are made to make space available at API for that individual.

Senator Olson asked the number of licensed beds at API.

Mr. Hogan answered 92 beds.

Senator Olson asked the occupancy rate over the last year.

Mr. Hogan replied the 75-80 average daily censuses show the facility averages 75 to 80 percent capacity.

Senator Olson expressed concern that if space were not available at mental health facilities, patients would be admitted to a local hospital that is not equipped for the special needs of patients with mental illnesses. He relayed his experience that these patients often require protection from themselves, and at times must be restrained. He remarked that most doctors are not trained in psychiatry and would be required to provide care they are not qualified to administer.

Mr. Hogan responded that the intent would not be to transfer those patients who are perceived to be a danger to themselves or others or who have been involuntarily committed. Rather, he stated the intent would be to stabilize patients so they could be transferred to their community.

Senator Hoffman asked if the Department has considered the financial risks of liability for failure to provide services.

Mr. Hogan indicated extensive discussion within the Department and with the Department of Law has occurred. He furthered that the procedures of other states is being researched and that he would provide information on the findings.

Co-Chair Wilken cited the analysis in the fiscal note, which reports that the Designated Evaluation and Treatment (DET) program would no longer receive \$724,900 federal funding beginning in FY 05. He surmised this is the impetus of this legislation.

Mr. Hogan affirmed that the program would receive a reduction of \$700,000 in FY 05, according to the Governor's proposed budget. He expressed intent to secure alternative funding for this program and told of options. He emphasized the need for this legislation to improve management of the program.

VERNER STILLNER, Legislative Representative, Alaska Psychiatric Association, read his testimony into the record as follows.

The mental health system can best be judged when it is under a state of emergency. And such an emergency in mental health system is covered by this piece of legislation. In other words, when an individual, due to mental illness, is dangerous to self or others, or gravely disabled and unable to care for themselves, a physician or a mental health professional can petition the court for a 72-hour hold. And an involuntary hospitalization takes place. Currently that can take place in Palmer, Ketchikan, Cordova, Homer, Valdez, Sitka, Bethel, Kodiak, Juneau and Fairbanks. And then if the individual needs to be committed for a 30-day evaluation, a longer period of time, that individual can be hospitalized at Fairbanks Memorial Hospital or Bartlett Regional Hospital, or the API.

My concern about this piece of legislation is that there may be an unfunded mandate. In other words, you don't fund an emergency system in my estimation with a letter of intent. I predict that when the Committee of next fiscal year comes around and the money has expired for this kind of payment for these hospitals I've mentioned, the hospitals will start saying "no" and pointing to the API.

The cuts in the budget that are proposed in the House and in the Senate, cut the budget for institutional care, for community care and for transport of patients to such facilities. So my concern is that if these systems of designated evaluation treatment facilities are not properly assured of funding, they will start saying "no" and start shifting people to the API. And the API by next year will be downsized to a bed census of 72 capacity. And I predict that the current census will be all that they currently will be able to do and these hospitals will be left with individuals to evaluate and treat and possibly not be compensated for.

I support the administrative procedures in this provision to better manage those monies, in other words, that these hospitals have to notify the Department when someone is admitted. All that I think needs to be greatly improved and

there are some cost savings there. But I'm concerned that the bill currently the way it is funded, will be a unfunded mandate to hospitalize individuals in an emergency basis and therefore I think the mental health of the communities and also the public health of the community may be compromised.

Senator Hoffman understood the witness testified that the capacity of API would be reduced in the year 2005.

Mr. Stillner affirmed the new facility would contain 72 beds.

Mr. Hogan clarified the facility would contain 74 beds with the ability to increase to 80 beds in the event of an emergency. He informed that the new facility is scheduled to open in July 1, 2005.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB278

CS FOR SENATE BILL NO. 278(L&C)

"An Act relating to fees for the inspection of recreational devices, including instructional devices, for certificates of fitness for electrical wiring and plumbing, for filing voluntary flexible work hour plan agreements, and for licenses for boiler operators; relating to the building safety account; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "creates two new fees and increases existing fees charged by the Department of Labor and Workforce Development."

GREG O'CLARY, Commissioner, Department of Labor and Workforce Development, testified this legislation relates to user fees, which have not been increased for ten years.

GREY MITCHELL, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development, outlined the bill. Section 1, he stated would establish a fee for amusement and recreational devices for each inspection performed. These fees, he informed, would pay the cost of inspector travel and certification for testing that must occur outside Alaska, and subsequently pay the cost to maintain the inspection services.

Mr. Mitchell detailed that Section 2 would impose a \$200 fee for boiler operator licenses, pointing out that no fees currently are imposed for this license and the fee would support the program that administers testing and issues the licenses.

Mr. Mitchell next informed that Section 3 would increase the existing license fee by \$20 for electricians and plumbers from \$160 to \$200 for a two-year. He reported this fee was last increased in the year 1993 and the increased revenues would pay the cost of an additional electrical inspector position, which along with the current two positions, would provide "a good coverage area" for the State with one inspector located in Southeast Alaska, one in Southcentral and the third located in the Northern areas. He noted the number of plumbing inspectors would not change.

Mr. Mitchell then explained that Section 4 relates to a filing fee and qualified that the revenues from this fee would not be utilized to support inspection services, but would rather be deposited to the State general fund.

Commissioner O'Clary interjected that Co-Chair Green has proposed an amendment to Section 4.

Mr. Mitchell continued that Sections 5 and 6 would establish that the fees charged in Sections 1 through 3 would be deposited into the Building Safety Account, a sub-account of the State general fund utilized for the mechanical inspection sections programs. He remarked this office operates "as close as you can get in government, like a business", explaining that the fees charged are directly used to fund the services provided.

Mr. Mitchell concluded with Section 7 that establishes the effective date.

Senator Olson asked the number of people who would be affected by the fees imposed in Section 1 for inspection of recreational and amusement vehicles.

Mr. Mitchell replied that approximately 50 businesses in the State operate recreational devises. He noted this includes businesses that operate go-carts, ski lifts and bumper cars. He stated that an amendment to the companion legislation adopted by the House of Representatives would exempt from the fee a company such as Golden Wheels, the largest operator, to employ inspectors from out-of-state. He relayed the Department would support such an amendment to the Senate bill as well.

Senator Olson referenced the \$100 filing fee for applications for flexible work schedules proposed in Section 4. He asked if public employers would be subject to this fee as well as the private sector. He exemplified prison guards working 12-hour shifts.

Mr. Mitchell responded this legislation would only apply to private businesses, noting the current exemption in the statute requiring overtime pay for flexible work hour plans. He used workweeks of four 10-hour days as an example. He stated this legislation would impose a fee for applications for the exemption. He reported the Department received approximately 200 such applications the previous year.

Senator Bunde clarified the provisions of Section 4 would not apply to State negotiated union contracts that allow State workers to work less than 40 hours per week.

Mr. Mitchell affirmed.

Amendment #1: The amendment deletes "for filing voluntary flexible work hour plan agreements," from the title of the bill on page 1, lines 2 and 3. The amended language reads as follows.

"An Act relating to fees for the inspection of recreational devices, including instructional devices, for certificates of fitness for electrical wiring and plumbing, and for licenses for boiler operators; relating to the building safety account; and providing for an effective date."

This amendment also deletes Section 4 from the bill on page 2, lines 7 - 10, which read as follows.

Sec. 4. AS 23.10.060 is amended by adding a new subsection to read:

(f) An employer shall pay a nonrefundable fee of \$100 for each voluntary flexible work hour plan agreement that the employer files with the department under (d)(14) of this section.

Co-Chair Green moved for adoption.

Co-Chair Wilken objected for discussion purposes.

Co-Chair Green explained that current statute require employers to pay employees overtime pay for work performed beyond 40 hours per week or eight hours per day. She noted this statute also allows an employer and an employee to mutually agree to an alternative arrangement, such as four ten-hour workdays within a week, without

overtime compensation, provided that the employer submits to the Department of Labor and Workforce Development a "voluntary flexible work plan". She opposed the provision in this legislation that would impose a \$100 filing fee to the employer, as it involves a voluntary agreement between the employer and employee.

Co-Chair Wilken calculated the fiscal note for this legislation would become zero if this amendment were adopted.

Commissioner O'Clary informed that a zero fiscal note would be acceptable to the Department.

Co-Chair Wilken removed his objection to the adoption of the amendment.

Senator Bunde understood that fees are intended to equal the cost of processing licenses, permits, etc. He surmised therefore that if this amendment passes, flexible work plans would no longer be required or filed with the Department to negate any expense to the Department.

Commissioner O'Clary replied that the notification would continue to be required but that no fees would be collected for this service.

Senator Bunde asked what the Department does with the flexible work plan notifications.

Mr. Mitchell reaffirmed that the flexible work plans would still be required through regulation. He stated that the Department reviews these plans to ensure they meet the intent of the overtime exemption provisions.

Senator Bunde remarked that administering this program must incur an expense to the Department.

Mr. Mitchell affirmed that staff time is spent reviewing and approving the flexible work plans.

Senator Bunde asked the cost.

Mr. Mitchell did not know the exact amount.

Senator Bunde opined that the cost should be determined and reflected in the fiscal note.

Co-Chair Green pointed out this amendment would maintain the status quo of the program, as no fees are currently collected.

Co-Chair Wilken removed his objection to the adoption of the amendment.

Senator Bunde objected. He asserted that the fiscal note should not be zero, but rather should reflect the cost of administering the program.

Co-Chair Wilken asked the approximate range of the cost.

Commissioner O'Clary qualified that any estimate would be speculation and very approximate.

Mr. Mitchell calculated that approximately 200 to 250 flexible work plans are filed each year and that depending upon the complexity, each plan could require up to one-half hour to review. He noted that simpler plans could be reviewed in ten minutes. He pointed out however, that staff time is only a portion of the program's expenses and that office space and other expenses are incurred. He estimated the program would cost approximately \$2500 per year.

Co-Chair Wilken asked if the margin of error would be approximately \$1000.

Mr. Mitchell agreed this was a fair assessment.

Senator Bunde calculated the cost per filing to be approximately \$10.

Mr. Mitchell agreed this is an approximate amount.

Senator Bunde requested an updated fiscal note.

Co-Chair Wilken suggested the Committee adopt the amendment and hold the bill to await an updated fiscal note.

Without objection the amendment was ADOPTED.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB368

SENATE BILL NO. 368

"An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and

providing for an effective date."

This was the third hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "increases the cigarette tax from a dollar a pack of 20 cigarettes to two dollars per pack and tobacco tax from 75 percent to 100 percent of the wholesale cost. In addition, SB 368 allows the Department of Public Safety to seize and dispose of assets used in cigarette smuggling and tax evasion activities."

Co-Chair Wilken noted CS SB 378 23-GS2116\I incorporates the six amendments adopted at the previous hearing and makes no other changes.

Senator Hoffman commented this is a "bad, bad bill."

Co-Chair Green expressed concern about the forfeiture provisions of this legislation. She stressed the important to decide whether the intent of this legislation is to generate revenue for the State, or for advocacy groups, or to change behavior. She stated she would oppose this bill.

Senator Bunde offered a motion to report SB 368, as amended, from Committee with individual recommendations and accompanying fiscal notes.

Without objection SB 368 (FIN) MOVED from Committee with fiscal note #1 for \$828,100 from the Department of Revenue and fiscal note #2 for \$206,400 from the Department of Public Safety.

#SB231

CS FOR SENATE BILL NO. 231(STA)

"An Act relating to unclaimed property; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "shortens the time period after which certain unclaimed property is presumed to be abandoned and must be transferred to the custody of the State. Senate Bill

231 conforms to the most current Uniform Unclaimed Property Act."

RACHEL LEWIS, Unclaimed Property Administrator, Division of Treasury, Department of Revenue, testified this legislation would shorten dormancy periods for unclaimed property. This, she informed, would provide the State the opportunity to locate owners of unclaimed property quicker, and would allow companies that hold "uncashed" checks and banks with inactive accounts to "clean those off their books" in a timely manner. She stated that holding unclaimed property creates a liability for companies and banks and that the State would become the active custodian for these assets. She also noted that this legislation would allow assets to become the property of the State sooner to the benefit of all residents. She explained that these funds could be used for schools, road projects and other programs until the owner submits a claim for the assets.

Co-Chair Wilken amendment explanations

Amendment #2: This amendment changes the language in Section 5 on page 3, lines 14 - 30 to read as follows.

Sec. 5. AS 34.45 is amended by adding a new section to read:

Sec. 34.45.175. Certain property distributed in insurance company reorganizations. (a) The following property distributable in the course of a demutualization or related reorganization of an insurance company is deemed abandoned two years after the date of demutualization or reorganization as follows:

(1) money that remains unclaimed and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent;

(2) stock or other equity interest if

(A) the instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect; and

(B) the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(b) Property that is not subject to (a) of this section is reportable as otherwise provided in AS 34.45.110 - 34.45.780.

Co-Chair Wilken moved for adoption and objected for an explanation.

Ms. Lewis noted that the legislation contains a definition of demutualization that "did not fit the stylistic needs of Alaska statutes." This amendment, she stated was drafted by the Department of Law to better conform the definition to Alaska statutes.

Co-Chair Wilken removed his objection and the amendment was ADOPTED without objection.

Amendment #3: This amendment inserts two new bill sections on page 8, following line 14 to read as follows.

Sec. 14. AS 34.45.320(d) is amended to read:

(d) the holder of an equity [OWNERSHIP] interest under AS 34.45.200 shall deliver a duplicate certificate, or other evidence of ownership if the holder does not issue certificates of ownership, to the department. Upon delivery of a duplicate certificate to the department, the holder and a transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability, in accordance with the provisions of AS 34.45.330 to every person, including a person acquiring the original certificate or the duplicate of the certificate issued to the department, for loss or damage resulting to a person by the issuance and delivery to the department of the duplicate certificate.

Sec. 15. AS 34.45.330(c) is amended to read:

(c) A holder who has delivered property [, INCLUDING A CERTIFICATE OF AN OWNERSHIP INTEREST IN A BUSINESS ASSOCIATION,] other than money to the department under AS 34.45.110 - 34.45.430 [,] may reclaim the property if it is still in the possession of the department, without payment of a fee or other charge, upon filing proof that the owner has claimed the property from the holder.

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Wilken moved for adoption and objected for an explanation.

Ms. Lewis explained this amendment reflects recommendations from the Division of Legal and Research Services to address grammar and punctuation.

Co-Chair Wilken removed his objection.

Co-Chair Green asked if this amendment would insert new language

into the bill.

Ms. Lewis replied that the Department of Law recommended against utilizing "ownership" and "equity" in the same sentence and this amendment therefore delineates the two words.

Co-Chair Wilken noted this amendment was submitted at the request of the Division of Legal and Research Services.

Without objection the amendment was ADOPTED.

Co-Chair Green offered a motion to report SB 231, as amended from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS SB 231 (FIN) MOVED from Committee with fiscal note #2 for \$60,000 from the Department of Revenue.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:33 AM